IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2405 OF 2007

Revansiddh Apparao Wagh ..... ....Petitioner.
V/s
Sawata Gena Mali ..... ....Respondent.

Mr.P.S.Dani i/by Mr.A.A.Joshi, Adv. for the petitioner.

Mr.S.S.Kanetkar, Adv. for the respondent.

**CORAM: A.P.DESHPANDE, J.**
27/6/07

PC:

Rule.

Rule made returnable forthwith. By consent of parties taken up for final hearing.

The respondent is admittedly original owner of gut No.1227. The respondent executed a sale deed in regard to land admeasuring 40 ars which denoted as gut No.A-1227 in favour of one Gonvid Jagannath Bhosale. On 30.4.2003 the respondent executed a sale deed in favour of Shri Bhosale. Another sale deed has been executed by the respondent in regard to 56 Ars land which is denoted as gut No.B-1227. The said sale deed has been executed in favour of one Hanmant Sadhu Gaikwad on 12.7.2005. The said two persons by name Govind Bhosale and Hanmant Gaikwad have executed two separate sale deeds of the suit lands admeasuring 40 Ars and 56 Ars in favour of present petitioner on 23.11.2005 and 3.3.2006. The respondent who is the original plaintiff is the witness to the said two sale deeds.

2. The respondent-plaintiff instituted a suit contending that the sale deeds purported to have been executed by the plaintiff in favour of Govind Bhosale and Hanmant Gaikwad are not, out and out sale transactions but are executed as and by way of mortgage to secure the loan transaction. With this averment made in the plaint the plaintiff has sought main relief of declaration to the following effect : "it be declared that for the reasons stated in the plaint, the defendant has not acquired any right in the suit lands and the suit land continues to be owned and possessed by the plaintiff. What is relevant to note is that Govind Bhosale and Hanmant Gaikwad are not impleded as party-defendants in the suit and no declaration is sought in relation to the registered sale deeds executed by the plaintiff in favour of these two persons. In this facts situation the respondent instituted a suit and therein moved an application under Order XXXIX Rules 1 and 2 seeking temporary injunction against the present petitioner-defendant. The temporary injunction sought for is to restrain the petitioner from interfering with possession of the plaintiff over the suit property. The trial Court after considering the rival contentions has rejected the temporary injunction application. Aggrieved by the order passed by the trial Court the respondent-plaintiff filed miscellaneous civil appeal before the District Court and the First Appellate Court reversing the order passed by the trial Court has allowed the application, which has prompted the defendant to file this petition.

3. Learned counsel for the petitioner has pointed out that the material objections raised by the petitioner, which are referred to herein above, have not at all been considered by the First Appellate Court while recording finding in relation to the prima facie case. The First Appellate Court has mainly relied on two circumstances to grant temporary injunction in favour

of the respondent. The first circumstance is that the present petitioner/defendant has executed an affidavit before the Notary which goes to declare that the suit transaction is a mortgage transaction. In the said affidavit there is also a recital that on return of money by the plaintiff to the defendant a re-conveyance shall be executed in favour of the defendant. In the written statement the petitioner has categorically denied the execution of the said affidavit. The First Appellate Court has not recorded any reason as to why it has chosen to rely upon the said document. There is no prima facie finding recorded about the said document being reliable for being taking into consideration for grant of injunction. The other circumstance on which the First Appellate Court has relied upon are the receipts issued by Chandrabhaga Cooperative Sugar Factory to which the plaintiff claims to have supplied sugar crop in the year 2005-06. The petitioner has objected to the said finding by making various submissions such as absence of the gut number on the bill and the fact that the plaintiff continues to own about one acre of land even after parting of 40 ars and 56 ars of land. I do not propose to deal with the questions raised in the writ petition by respective counsel in support of their case. I am of the clear view that the First Appellate Court has passed a cryptic order granting temporary injunction without considering the main contentions raised by the petitioner, which have bearing on the issue of prima facie case. For the reasons set out herein above I propose to set aside the impugned order and remand the matter to the First Appellate Court for fresh decision of the Misc. Civil Appeal. It shall decide the same after considering the objections raised by the petitioner. As the impugned order is found to be patently erroneous, interference in exercise of writ jurisdiction is called for. At this stage learned counsel for the respondent

submits that the First Appellate Court may be influenced by observations made in this order. Hence it is clarified that the First Appellate Court shall proceed to decide the miscellaneous civil appeal, uninfluenced by the observations made in this order. In the result writ petition is allowed. Impugn;ed order passed by the District Judge, Pandharpur dated 7.3.2007 is quashed and set aside. Matter is remanded to the District Judge for fresh decision of the miscellaneous civil appeal on merit. It is pointed out that during the pendency of the appeal before the First Appellate Court an order of status quo was operating. The learned counsel for the respondent seeks that the said order be continued till miscellaneous civil appeal is decided. Learned counsel for the petitioner has no objection. Hence status quo to continue till decision of the miscellaneous civil appeal. Rule made absolute in above terms.

27.6.07